

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - LANSING

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FREDERIC C. AMBROSE and  
FLEX-REST, LLC,

Plaintiffs,

v.

STEELCASE INC. and  
OFFICE DETAILS INC.,

Defendants.

Civil Action No: 1:02-CV-537

Judge David W. McKeague

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**REVISED FINAL PRETRIAL ORDER**

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A final pretrial conference was held on the 17th day of November, 2003. Appearing as counsel for the Plaintiffs were:

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## **1. EXHIBITS**

By agreement of the parties, Plaintiffs have numbered their exhibits beginning at PX 1 and extending sequentially upward. Defendants have numbered their exhibits beginning at DX 500 and extending sequentially upwards. The following exhibits will be offered by the Plaintiffs and the Defendants:

Defendants' objections are denoted as follows: R = Relevancy, F.R.E. 402  
P = Prejudice F.R.E. 403  
C = Cumulative, F.R.E. 403  
L = Lack of Personal Knoweldge, F.R.E. 602  
H = Hearsay, F.R.E. 802  
F = Foundation/Authenticity, F.R.E. 901  
M = Subject of Motion in Limine  
Res = Objection Reserved (not yet seen)  
S = Settlement

### **A. PLAINTIFFS' EXHIBITS**

No.	Exhibit	Objections Fed. R. Evid.	Offered	Admit/Not Admitted (A) - (NA)
PX 1	Patent-in-Suit, Ambrose, U.S. Patent No. 5,709,489 for "Keyboard Positioning System," issued 01/20/1998	No Objection		
PX 2	Withdrawn			
PX 3	Assignment for the patents-in-suit, 5,709,489 (Serial No. 08/734,755) and 5,961,231 (Serial No. 08/677,410), mailed 01/15/1998 [Bates A009205-A009210]	No Objection		

PX 4	Ambrose, Patent Application for Serial No. 07/648,628, filed 02/01/1991 [pages 14-28 of '489 file history]	No Objection		
PX 5	Rule 131 Declaration of Fred Ambrose, dated 05/02/1991, filed in Serial No. 08/306,989 [pages 710-712 of '231 file history]	R, H, P (Incomplete)		
PX 6	Ambrose International patent publication No. WO 92/13722 (PCT/US92/00824), filed 02/03/1992	R		
PX 7	Flow Chart of Ambrose Patent No. 5,709,489	No Objection		
PX 8	Withdrawn			
PX 9	Drawings re Conception of Invention [Bates A005450-A005461]	R, P (The documents cover a period of 16 months extending beyond Ambrose's application date, and include various embodiments. It is a prejudicial and misleading compilation.)		
PX 10	Fax from Fred Ambrose to Gary Blodgett, dated 01/03/1991, with 5 page attachment, "The Ambrose Swivel" [Bates A005690-A005695]	No Objection		
PX 11	Fax from Fred Ambrose to Gary Blodgett, dated 04/03/1991, with 1 page drawing attached [Bates A005688-A005689]	R		

PX 12	Photographs showing conception of Ambrose device [Bates A000497-A000523]	R, P (The documents cover a period of 16 months and extending beyond Ambrose's application date, and include various embodiments. It is a prejudicial and misleading compilation.)		
PX 13	Directions for Flex-Rest device [Bates A005664]	R		
PX 14	Report by Brian O'Malley, entitled "Keyboard-Associated Carpal Tunnel Syndrome," dated 03/25/1991 of his	R, H		
PX 15	Photographs [Bates A009937-A009948]	R, H, F		
PX 16	Compilation of receipts for early parts and brochure orders of Fred Ambrose [Bates A009901-A009918]	R, H, F		
PX 17	Photographs of early device [Bates A005668, A005671, A005674, A005677]	R, H, F, Prejudicial compilation		
PX 18	Photographs [Bates A004869-A004873]	R		
PX 19	Flex-Rest Brochure "A Better Way to Type" [A001279-A001280]	No Objection		
PX 20	Advertising for Flex-Rest [Bates A005622]	No Objection		
PX 21	Flex-Rest Label "Because Your Employer Cares!" copyright 1991 [Bates A001268]	No Objection		
PX 22	Order Form for Flex-Rest, copyright 1991 [Bates A002455-A002456]	No Objection		

PX 23	Flex-Rest Brochure, "Man's Answer to Nature's Design," copyright 1994 [Bates A002467-A002470]	No Objection		
PX 24	Flex-Rest Price Sheets [Bates A002475-A002478]	No Objection		
PX 25	Flex-Rest Brochure, "The FL-5000 Keyboard Tray System" [Bates A002479-A002480]	No Objection		
PX 26	Flex-Rest Brochure, "Ergo Ultima" [Bates A002481-A002482]	No Objection		
PX 27	Flex-Rest Brochure, "FL-9000H" [Bates A002483-A002484]	No Objection		
PX 28	Flex-Rest Brochure, "FL-Arm System" [Bates A002485-A002486]	No Objection		
PX 29	Flex-Rest Advertising, and the team in the "Exceptionally Comfortable" [Bates A002487]	No Objection		
PX 30	Flex-Rest Price Sheet – February 1991 [Bates A007009]	No Objection		
PX 31	Flex-Rest Price Sheet – April 1991 [Bates A005656]	No Objection		
PX 32	Letters from Fred Ambrose to Dan Emmerich, dated April 22, 1991 and April 17, 1991 [Bates A005505-A005506]	R		
PX 33	Letter from Fred Ambrose to David Glass, dated July 25, 2002 with Patent License Agreement attached [Bates A006494-A006543]	No Objection		
PX 34	Global Brochure [Bates A009955-A009956]	No Objection		

PX 35	Compilation Exhibit – Steelcase file re Fred Ambrose [Bates SC01264-SC01285]	C, R, H, F		
PX 36	Letter from Bruce Preston to Fred Ambrose, dated 02/22/1991, with attachments [Bates SC01284]	No Objection		
PX 37	Letter from Fred Ambrose to Bruce Preston, dated 03/06/1991, with attachments [Bates SC01281-SC01283]	No Objection		
PX 38	Handwritten note, dated 03/06/1991 [Bates SC05411]	No Objection		
PX 39	Memo from Bruce Preston to Jack Tanis, dated 03/12/1991 [Bates SC05412]	No Objection		
PX 40	Letter from Bruce Preston to Fred Ambrose, dated 04/16/1991 [Bates SC01280]	No Objection		
PX 41	Email from Sharon Seys to Jack Tanis, dated 05/21/1991 [Bates SC05413]	No Objection		
PX 42	Letter from Fred Ambrose to Bruce Preston, dated 06/06/1991 [Bates SC01279]	No Objection		
PX 43	Memo from Sharon Seys to Jack Tanis, dated 06/17/1991 [Bates SC05414]	No Objection		
PX 44	Handwritten note re Fred Ambrose [SC05415]	No Objection		
PX 45	Letter from Fred Ambrose to Bruce Preston, dated 06/18/1991 [Bates A004907]	No Objection		
PX 46	Letter from Bruce Preston to Fred Ambrose, dated 06/27/1991 [Bates SC01275-SC01278]	No Objection		

PX 47	Letter from Bruce Preston to Fred Ambrose, dated 08/07/1991, with attachments [Bates SC01272-SC01274]	No Objection		
PX 48	Letter from Bruce Preston to Fred Ambrose, dated 10/03/1995 [Bates SC01271]	No Objection		
PX 49	Letter from Bruce Preston to Fred Ambrose, dated 11/08/1995, with attachment [Bates A004537]	No Objection		
PX 50	Letter from Fox & Associates to Bruce Preston, dated 10/24/1996 [Bates A001552]	No Objection		
PX 51	Letter from Edward Ketterer to Fred Ambrose, dated 06/12/1997 [Bates A004684]	No Objection		
PX 52	Letter from Kirk Kuhfeldt to Fred Ambrose, dated 02/19/1998 [Bates A004693]	No Objection		
PX 53	Letter from Carl Clark to Harry Jones, dated 05/04/1998 [Bates SC00447]	No Objection		
PX 54	Letter from Harry Jones to Carl Clark, dated 05/28/1998, with attachments [Bates SC00448; SC00443-SC00446]	No Objection		
PX 55	Letter from Kirk Kuhfeldt to Fred Ambrose, dated 10/16/1998 [Bates A004683]	No Objection		
PX 56	Letter from Thomas McKinley to Bruce Preston, dated June 24, 1991 [Bates SC06100-SC06101]	No Objection		
PX 57	Fred Ambrose's log of telephone calls with Steelcase from 02/22/1991 to 07/08/1991 [Bates A004905]	R, H, F		

PX 58	Letter from Steve Fox to Carl Little, dated 10/05/1995 [Bates A000777-A000779]	No Objection		
PX 59	Letter from Carl Little to Fred Ambrose, dated 10/26/1995 [Bates A000744]	No Objection		
PX 60	Notes of Meeting between Weber Knapp and Fred Ambrose, dated 02/08/1996 [Bates A000736-A000738]	No Objection		
PX 61	Letter from Fred Ambrose to Carl Little, dated 02/27/1996 [Bates A000712-A000715]	No Objection		
PX 62	Letter from Carl Little to Fred Ambrose, dated 03/18/1996 [Bates SC05913-SC05914]	No Objection		
PX 63	Fax from Fred Ambrose to Carl Little, dated 03/25/1996 [Bates SC05910-SC05911]	No Objection		
PX 64	Letter from Carl Little to Fred Ambrose, dated 04/03/1996 [Bates SC05917-SC05918]	No Objection		
PX 65	Fax from Fred Ambrose to Carl Little, dated 04/15/1996 [Bates A000677]	No Objection		
PX 66	Fax from Fred Ambrose to Steve Fox, dated 04/15/1996, with a copy of the Weber Knapp Contract attached [Bates A000667-A000676]	No Objection		
PX 67	Letter from Fred Ambrose to Carl Little, dated 04/16/1996 [Bates A000678]	No Objection		
PX 68	Fax from Carl Little to Fred Ambrose, dated 04/19/1996 [Bates A000666]	No Objection		

PX 69	Letter from Harry Jones to Steve Fox, dated 05/14/1996, with attachments [Bates A000644-A000655]	No Objection		
PX 70	Fax from Fred Ambrose to Carl Little, dated 09/10/1997 [Bates A000578]	R, H, F, P		
PX 71	Fax Memo from Carl Little to Fred Ambrose, dated 09/10/1997 [Bates A000576-A000577]	R, H, F, P		
PX 72	Fax Memo from Carl Little to Fred Ambrose, dated 09/11/1997 [Bates A000568]	R, H, F, P		
PX 73	Letter from Christopher Stamos to Harry Jones, dated 10/15/1997 {Bates A000563-A000564}	R, H, F, P		
PX 74	Letter from Christopher Stamos to Harry Jones, dated 10/17/1997 [Bates A000534-A000552]	R, H, F, P		
PX 75	Fax Memo from Carl Little to Fred Ambrose, dated 10/21/1997 [Bates A000532]	R, H, F, P		
PX 76	Fax from Christopher Stamos to Fred Ambrose, dated 10/27/1997, with attachment of letter from Harry Jones to Christopher Stamos [Bates A000528-A000530]	R, H, F, P		
PX 77	Letter from Carl Clark to Harry Jones, dated 05/04/1998 [Bates SC00447]	No Objection		
PX 78	Letter from Harry Jones to Carl Clark, dated 05/28/1998, with attachments [Bates SC00448; SC00443-SC00446]	No Objection		
PX 79	Defendants' Election on Advice of Counsel, dated 03/03/2003	R, P		

PX 80	Steelcase's Privilege Log, dated 12/06/2002	R, P		
PX 81	Letter from George Pazuniak to Edmund Sease, dated 04/24/2003, attaching Steelcase's "expanded" privilege log	R, P		
PX 82	Defendants' Response to Plaintiff Flex-Rest's First Set of Interrogatories To Defendants, Nos. 4 and 6, dated 08/08/2002	R, P		
PX 83	Office Details SpecCatalog [Bates A005973-A006067]	No Objection		
PX 84	Cover plus excerpts from Office Details SpecCatalog [Bates A005973; A006030-A006036, A006040, A006042]	No Objection		
PX 85	Withdrawn			
PX 86	Installation Instructions for 99274 Keyboard Support	No Objection		
PX 87	Installation Instructions for Compact Platform	No Objection		
PX 88	Installation Instructions for Compact Platform	No Objection		
PX 89	Withdrawn			
PX 90	Withdrawn			
PX 91	Withdrawn			
PX 92	Installation Instructions for Palm Rests for Compact or Slider Platforms	No Objection		

PX 93	Installation Instructions for Standard Spring Assist Fixed Mount	No Objection		
PX 94	Installation Instructions for Standard Spring Assist Compact Platform, Extended Spring Assist Compact Platform and Adjustable Writing/Mousing	No Objection		
PX 95	Installation Instructions Compact Platform	No Objection		
PX 96	Withdrawn			
PX 97	Withdrawn			
PX 98	Product Sheet for Spring Assist Mechanism - Extended	No Objection		
PX 99	Product Sheet for Spring Assist Mechanism – Standard	No Objection		
PX 100	Withdrawn			
PX 101	Withdrawn			
PX 102	Installation Instructions for Cushioned Replacement for Palm Rests	No Objection		
PX 103	George, Patent No. 5,230,289 for "Keyboard Support Assembly," issued 07/27/1993 [Bates SC00573-SC00585]	No Objection		
PX 104	Letter from Thomas McKinley to Bruce Preston, dated 03/05/1991, attaching draft of patent application [Bates SC00517-SC00547]	No Objection		
PX 105	File History of Patent No., 5,230,289 [Bates A007170-A007292]	No Objection		

PX 106	Features of KBS Device [Bates SC00488]	No Objection		
PX 107	Withdrawn			
PX 108	Physical Exhibit – Steelcase's Compact Device	No Objection		
PX 109	Withdrawn			
PX 110	Physical Exhibit – Steelcase's 99274 Device	No Objection		
PX 111	Withdrawn			
PX 112	Withdrawn			
PX 113	Physical Exhibit – Flex-Rest's Prototype Device	No Objection		
PX 114	License Agreement between WorkRite Ergonomic Accessories and Office Details, Inc., dated March 2001 [Bates SC05416-SC05427]	R		
PX 115	Withdrawn			
PX 116	Withdrawn			
PX 117	Withdrawn			
PX 118	Withdrawn			
PX 119	Withdrawn			
PX 120	1988 American National Standard for Human Factors Engineering of Visual Display Terminal Workstations [Bates A009886-A009900]	R, P, H, F, M		

PX 120-A	Excerpts from 1988 American National Standard for Human Factors Engineering of Visual Display Terminal Workstations [A009886; A009887; A009896]	R, P, H, F, M		
PX 121	International Standard – ISO 9241-4, dated 08/01/1998 [Bates A009709-A009741]	R, P, H, F, M		
PX 121-A	Excerpt from International Standard – ISO 9241-4, dated 08/01/1998 [Bates A009709; A009721; A009722]	R, P, H, F, M		
PX 122	International Standard – ISO 9241-5, dated 10/01/1998 [Bates A009678-A009708]	R, P, H, F, M		
PX 122-A	Excerpt from International Standard – ISO 9241-5, dated 10/01/1998 [Bates A009678; A009679; A009697]	R, P, H, F, M		
PX 123	Article – Gerr, "A Prospective Study of Computer Users: I. Study Design and Incidence of Musculoskeletal Symptoms and Disorders," <i>American Journal of Industrial Medicine</i> , 41:221-235 (2002) [Bates A009871-A009885]	R, P, H, F, M		
PX 124	Article – Marcus, "A Prospective Study of Computer Users: II. Postural Risk Factors for Musculoskeletal Symptoms and Disorders," <i>American Journal of Industrial Medicine</i> , 41:236-249 (2002) [Bates A009857-A009870]	R, P, H, F, M		
PX 125	Demonstrative – Time Line	Res		
PX 126	Steelcase Sales Information [Bates SC01225-SC001253]	R, M		
PX 127	Steelcase 2000 Annual Report [Bates A006812-A006875]	R, P, M		

PX 128	Steelcase 2001 Annual Report [Bates A006876-A006903]	R, P, M		
PX 129	Steelcase 2002 Annual Report [Bates A006904-A007008]	R, P, M		
PX 130	Withdrawn			
PX 131	List of Steelcase's devices accused of infringing Ambrose Patent No. 5,709,489	R, P, H, F		
PX 132	Withdrawn			
PX 133	Summary of Flex-Rest Sales for 1998 – February 2003 [Bates A009672-A009677]	No Objection		
PX 134	Flex-Rest Sales Analysis Report, by Sales Account [Bates A006544]	No Objection		
PX 135	History of Flex-Rest Sales for 1991 and 1992 [Bates A005700-A005701]	No Objection		
PX 136	Summary of Steelcase Accused Devices '489 Patent	R, P, H, F, M		
PX 137	Withdrawn			
PX 138	Withdrawn			
PX 139	Flex-Rest – Summary of Products Sold Under '489 Patent	R, P, H, F, M		
PX 140	Flex-Rest – Incremental Profit Calculation (Per Unit)	R, P, H, F, M		
PX 141	Lost Profits Calculation for '489 Patent	R, P, H, F, M		
PX 142	Withdrawn			

PX 143	Summary of Steelcase Sales and Costs of Accused Devices – '489 Patent	R, P, H, F, M		
PX 144	Reasonable Royalty Calculation for '489 Patent	R, P, H, F		
PX 145	Withdrawn			
PX 146	Withdrawn			
PX 147	2003 Details Catalog	No Objection		
PX 148	Photograph of Flex-Rest Label	No Objection		
PX 149	Current Flex-Rest Label	No Objection		
PX 150	Demonstrative Exhibit – Lost Profits By Year	Res		
PX 151	Demonstrative Exhibit – Lost Profits As a Portion of Total Sales	Res		
PX 152	Demonstrative Exhibit – \$9.66 Reasonable Royalty by Year	Res		
PX 153	Demonstrative Exhibit – \$9.66 Reasonable Royalty as a Portion of Total Sales	Res		
PX 154	Demonstrative Exhibit – \$20.25 Reasonable Royalty By Year	Res		
PX 155	Demonstrative Exhibit – Ambrose Color Coded Chart for Claim 1 of the '489 Patent	Res		
PX 156	Demonstrative Exhibit – Color coded chart of Ambrose '489 patent, Figures 2 and 6	Res		

PX 157	Demonstrative Exhibit – Ambrose color coded chart for claims 2 and 3 of the '489 patent	Res		
PX 158	Demonstrative Exhibit – Chart of accused mounting brackets and keyboard platforms	Res		
PX 159	Demonstrative Exhibit – Color coded chart of Steelcase 99274PR unit	Res		
PX 160	Demonstrative Exhibit – Color coded chart of Steelcase Compact unit	Res		
PX 161	Steelcase Summary Sales Sheet for Compact and 99274	No Objection		
PX 162	Steelcase Summary Sales Sheet for units sold of Compact and 99274	No Objection		
PX 163	Steelcase Operating Income on Accused Products	Res		
PX 164	Reasonable Royalty Calculations '489 Patent	Res		
PX 165	Infringing Share as Percentage of Total Steelcase Product s- Share Analysis '489 Patent	Res		
PX 166	Lost Profits Calculation – Based Upon Share Aalysis '489 Patent	Res		
PX 167	Reasonable Royalty Calculations – Based Upon Share Analysis '489 Patent	Res		

PX 168	Damages Summary – Based Upon Share Analysis '489 Patent	Res		
PX 169	\$20.25 Reasonable Royalty as a Portion of Total Sales	Res		
Plaintiffs also reserve the right to introduce any exhibit identified on Defendants' Exhibit List.				

## B. DEFENDANTS' EXHIBITS

Plaintiffs' objections are denoted as follows:

R = Relevancy, F.R.E. 402
P = Prejudice F.R.E. 403
C = Cumulative, F.R.E. 403
L = Lack of Personal Knoweldge, F.R.E. 602
H = Hearsay, F.R.E. 802
F = Foundation/Authenticity, F.R.E. 901
M = Subject of Motion in Limine
Res = Objection Reserved (not yet seen)
S = Settlement

Steelcase will move the admission of the exhibits listed below. Some of the exhibits may be withdrawn if earlier introduced by Plaintiffs to avoid unnecessary duplication of exhibits (but not if the exhibits are part of a relevant series of exhibits).

No.	Exhibit	Objections Fed. R. Evid.	Offered	Admit/Not Admitted (A) - (NA)
DX 501	Withdrawn – PX 1	--		
DX 502	U.S. Patent Number 5,961,231, dated 10/05/1999 [DDX 502]	R (Not prior art)		
DX 503	Prosecution histories of applications leading to U.S. Patent 5,709,489 [DDX 503]	No Objection		
DX 504	Prosecution histories of applications leading to U.S. Patent 5,961,231 [DDX 504]	R (Not prior art)		
DX 505A	GF Furniture Systems Brochure – Articulating Keyboard Supports, dated 1984 [DDX 575]	H, R (Not prior art)		
DX 505B	GF Furniture Systems Brochure – Articulating Keyboard Supports – Same as DX 505A, but has Steelcase receipt date, 1984 [SC00412-17]	F, H, R (Not printed publication)		
DX 506	GF Furniture Systems – O.P.S. Open Plan System Price List, dated 06/12/1984 [DDX 576]	H, R (Not printed publication)		
DX 507	GF Furniture Systems – Open Plan System Installation Instructions [DDX 578]	H, R (Not printed publication)		
DX 508	Demonstrative – GF Brochure	Res		
DX 509	Steelcase Installation Directions – Articulated Keyboard Shelf 99274, dated 11/23/1988 [SC00094-99]	R, H, F		

DX 510	Preprints of International Conference Ergonomics, Occupational Safety and Health and the Environment – Volume 1, including Stack, Barbara (1988), "Repetitive Strain Injury – Prevention and Rehabilitation," dated 10/24-28/1988 [DDX 587, 583 & 584]	H, R (Not prior art; not printed publication)		
DX 511	Library index card from Linda Hall Library – International conference on ergonomics, occupational safety and health and the environment [DDX 582, 586]	R, H		
DX 512	Reserved	Res		
DX 513	Withdrawn	--		
DX 514	Withdrawn	--		
DX 515	U.S. Patent Number 5,048,784 – Schwartz, dated 09/17/1991 [DDX 529]	No Objection		
DX 516	U.S. Patent Number 5,273,250 – Pemberton, dated 12/28/1993	R		
DX 517	Videotape of Ergo 2000 1989 U.S. West Installation Keyboard Support [DDX 567] {No sound}	R, H, P, F		
DX 518	Purchase Order – To U.S. West Communications (Vendor: Versatile Products), dated 06/30/1989 [DDX 568] [SC05962-67]	R, F, H		
DX 519	U.S. West Ergo 2000 Installation Photos [DDX 569] [SC05968-73]	R, F, H		
DX 520	Demonstrative – Picture of Ergo 2000 1989 Support correlated to '489 patent claims 1-3	Res		

DX 521	Letter to Frederic Ambrose from Carl Little (Weber Knapp) regarding letter of intent for license agreement, dated 03/18/1996 [DDX 518] [A001308-09]	No Objection		
DX 522	Letter to Carl Little from Fred Ambrose enclosing video, dated 04/16/1996 [DDX 517] [A001273]	No Objection		
DX 523	U.S. Patent Number 5,041,770 – Seiler, dated 08/20/1991 [DDX 530] [A000366-79]	No Objection		
DX 524	Letter to Frederic Ambrose from Steven Fox, dated 05/14/1996 [DDX 599] [A000622-25]	R, P, Privileged		
DX 525	Letter to Steven Fox from Harry Jones (Pennie & Edmonds), dated 05/14/1996 [DDX 519] [A000644-55]	R, P, H		
DX 526	Letter to Frederic Ambrose from Steven Fox regarding letter from Harry Jones, dated 05/20/1996 [DDX 600] [A000642-43]	R, P, Privileged		
DX 527	Letter to Paul Hayes from Steven Fox regarding letter from Harry Jones, dated 05/20/1996 [DDX 601] [A000640-41]	R, P, Privileged		
DX 528	Memo to Dean Bostosk and Paul Hayes from Fred Ambrose regarding letter from Harry Jones, dated 05/21/1996 [DDX 602] [A000638-39]	R, Privileged		
DX 529	Memo to Paul Hayes from Steven Fox enclosing draft IDS, dated 05/23/1996 [DDX 603] [A000633-37]	R, Privileged		
DX 530	Memo to Paul Hayes from Steven Fox enclosing revised draft IDS, dated 05/27/1996 [DDX 604] [A000630-32]	R, Privileged		

DX 531	Letter to Steven Fox from Dale Thiel regarding Ambrose patents, dated 03/12/1997 [DDX 523] [A000002-12]	R, H		
DX 532	Letter to Frederic Ambrose from Steven Fox regarding letter from Haworth, dated 03/21/1997 [DDX 607] [A001284]	R, Privileged		
DX 533	Letter to Frederic Ambrose from U.S. Department of Justice (Ira Kirschbaum) regarding U.S. West installation, dated 07/07/1997 [DDX 524] [A000570-71]	R, H, P		
DX 534	Excerpts from prosecution history of Flex-Rest's Patent 5,709,489	No Objection		
DX 535	Fax to Christopher Stamos from Fred Ambrose regarding Weber Knapp letters, dated 09/04/1997 [DDX 608] [A000569]	R, Privileged		
DX 536	37 Code of Federal Regulations (Patents, Trademarks and Copyright) section 1.56, dated 07/01/1995	Not Evidence		
DX 537	MPEP – Chapter 2000 – Duty of Disclosure, dated July 1998	Not Evidence		
DX 538	Jane Fulton Notebook, dated May 1990 – May 1991 [SC01254-63]	F, H, R (Not prior art)		
DX 539	Keyboard support features comparison chart, dated 06/22/1990 [SC04042]	H, F		
DX 540	Report from Steven Marlow of Ross Cooper (Conclusions – Keyboard support) [SC00674-78]	H, F		
DX 541	Fax to Rickson Sun from Laura Silverman enclosing report from Steven Marlow of Ross Cooper (Conclusions – Keyboard Support), dated 08/20/1990 [SC02979]	H, R (Not prior art)		

DX 542	Fax to Jim Kenyon from Rickson Sun enclosing memo regarding status report, dated 08/20/1990 [SC00710-712]	H, R (Not prior art)		
DX 543	Research Report – Laura Silverman, dated 08/24/1990 [SC00683-696]	H, R (Not prior art)		
DX 544	Letter to Dennis Kreps from Thomas McKinley regarding KBS search, color photos attached, dated 09/04/1990 [SC06074-75]	H, R (Not prior art)		
DX 545	Palm Rest pre-release drawings, dated 09/1990 [SC00776-78]	R (Not prior art)		
DX 546	Fax to Jack Beckering from Bill George enclosing an updated exploded view sketch, dated 10/15/1990 [SC03109-10]	R (Not prior art)		
DX 547	Memo to Jack Beckering, John Welch from Bill George regarding keyboard testing, dated 10/22/1990 [SC03104-06]	R (Not prior art)		
DX 548	Product Test Laboratory Report – Details Articulated Keyboard, dated 11/16/1990 [SC05333-48]	R (Not prior art)		
DX 549	Steelcase/Details Keyboard Support Comparative Tooling Cost Estimates, dated 11/13/1990 [SC03032]	R (Not prior art)		
DX 550	Steelcase/Details Keyboard Drawing Release Schedule, dated 11/19/1990 [SC00626]	R (Not prior art)		
DX 551	Memo to Jim Cottrell from Bill George regarding status report, dated 11/20/1990 [SC00973-74]	R (Not prior art)		
DX 552	Project update: Keyboard support, dated 11/29/1990 [PX 49] [SC00815-16]	R (Not prior art)		

DX 553	Product Test Laboratory Report – Details Keyboard/Reduced Welds, dated 12/12/1990 [SC05349-53]	R (Not prior art)		
DX 554	Steelcase KBS drawings, dated 11/1990 [SC05737-5811]	R (Not prior art)		
DX 555	Letter to Bruce Preston from Thomas McKinley enclosing draft KBS patent application, dated 03/05/1991 [PX 19] [SC00517-547]	No Objection		
DX 556	U.S. Patent Number 5,230,289 – George, dated 07/27/1993 [DDX 516] [A002961-73]	No Objection		
DX 557	Fred Ambrose write-up, fax, dated 02/05/1991 [DDX 533] [A005465-67]	No Objection		
DX 558	Letter from Fred Ambrose regarding Flex-Rest, dated 1991 [PX 15] [SC01283]	No Objection		
DX 559	Flex-Rest brochure – Because Your Employer Cares, dated 1991 [DDX 541] [A001268]	No Objection		
DX 560	Photos – Flex-Rest: The Keyboard Assistant, dated 1991 [PX 17] [A004869-73]	No Objection		
DX 561	Letter to Bruce Preston from Frederic Ambrose regarding Flex-Rest information package, dated 03/06/1991 [PX 14] [SC01281]	No Objection		
DX 562	Waiver signed by Ambrose, dated 03/06/1991 [A004895]	No Objection		
DX 563	Letter to Bruce Preston from Fred Ambrose, dated 06/18/1991 [PX 21] [A004907]	No Objection		

DX 564	Letter to Fred Ambrose from Bruce Preston enclosing KBS brochure, dated 06/27/1991 [DDX 508] [A002976-78]	No Objection		
DX 565	Letter to Fred Ambrose from Bruce Preston, dated 08/07/1991 [DDX 513] [A004633]	No Objection		
DX 566	Details KBS brochure [DDX 510] [A004626-27]	R (Not prior art)		
DX 567	Computer Support Tools (brochure/price list) [DDX 511] [A001687-88]	R (Not prior art)		
DX 568	Details KBS brochure [DDX 512] [A002981]	R (Not prior art)		
DX 569	Letter to Carl Clark from Harry Jones, dated 05/19/1997 [SC00430-442]	No Objection		
DX 570	Withdrawn – PX 51	--		
DX 571	Withdrawn – PX 55	--		
DX 572*	Notice of Recordation of Assignment from PTO, dated 01/15/1998 [A003029-34]	No Objection		
DX 573*	Withdrawn – PX 33	--		
DX 574*	Flex-Rest, Inc. Balance Sheets and Statements of Income for 1998-2001, dated 12/31/1999 [A009660-71]	R		
DX 575	Withdrawn	--		
DX 576	Demonstrative – Time Line	Res		
DX 577	Demonstrative – Steelcase's KBS	F, P, R (Not prior art)		

DX 578	Demonstrative – KBS Test Report	F, P, R (Not prior art)		
DX 579	Demonstrative – KBS Drawings, dated 11/12/1990	F, P, R (Not prior art)		
DX 580	Demonstrative – Steelcase/Details Keyboard support – exploded view, dated 10/15/1990	Res		
DX 581	Demonstrative – KBS' Hand Support Height Adjustment	R (Not prior art); Other objections reserved		
DX 582	Demonstrative – '489 claims chart	Res		
DX 583	Physical sample of 99274 keyboard support	Res		
DX 584	Physical sample of KBS keyboard support	R (Not prior art); Other objections reserved		
DX 585	Physical samples of Steelcase's keyboard supports	Res		
DX 586	Article, Alan Hedge, "Wrist postures etc" [A001873-82]	H, R (Not prior art)		
DX 587	'489 Claim Summary			
DX 588	Demonstrative – operation of keyboard			

Steelcase also reserves the right to introduce any exhibit identified on Plaintiffs' Exhibit List.

\* The Exhibits marked with an "\*" mean that the exhibits may not be introduced into evidence, and, if introduced, will be introduced for a limited purpose only. Some of the exhibits are included solely for the inequitable conduct hearing before the Court and not for the jury trial.

## **2. UNCONTROVERTED FACTS**

The parties have agreed that the following may be accepted as established facts:

1. This is a patent infringement action brought by Plaintiffs, Frederic C. Ambrose and Flex-Rest, LLC against Defendants, Steelcase Inc. and its wholly-owned subsidiary, Office Details Inc.
2. Plaintiff Frederic C. Ambrose is an individual and a citizen and resident of the Commonwealth of Massachusetts, residing at 142 The Channel, Brewster, Massachusetts 02631.
3. Plaintiff Flex-Rest, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts, with a principal place of business at 7 Brookfield Street, Worcester, Massachusetts 01605.
4. Defendant Steelcase Inc. is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business at 901 44th Street Southeast, Grand Rapids, Michigan 49508.
5. Defendant Office Details Inc. is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 25 Ottawa SW, Grand Rapids, Michigan 49503. It is a wholly-owned subsidiary of Steelcase Inc.
6. The Court has jurisdiction over the parties and the subject matter of this dispute.
7. United States Letters Patent No. 5,709,489 ("the '489 patent") entitled "KEYBOARD POSITIONING SYSTEM" was issued by the United States Patent and Trademark Office ("PTO") on January 20, 1998.

8. Plaintiff Flex-Rest, LLC is owner of all right, title and interest in the '489 patent. Flex-Rest owned the '489 patent during the period of alleged infringement in this case.
9. For purposes of this case, it is stipulated that there is no difference between the actions or standing of Defendants Steelcase Inc. and Office Details Inc., the actions of both may be deemed to be the actions of the other, and the two may be collectively referred to as "Steelcase."
9. Defendant Office Details Inc. is the manufacturer of various keyboard supports, including all keyboard supports, the 99274PR and Compact, charged with infringement, and sells such keyboards to third-parties, including the Steelcase network of dealers.
11. The sales of the accused keyboard supports were provided by Steelcase to Flex-Rest on November 10, 2003, and have been marked as PX 161.
12. The earliest drawing or photograph relating to any keyboard support conceived or designed by Fred Ambrose is dated January 3, 1991.
13. Plaintiffs acknowledge that, based upon this Court's Order of November 10, 2003, (incorporating the Memorandum Opinion of the same date) interpreting the term "clamp" in the '489 patent claims 1-3, Steelcase's previously accused Stella, Slider, and Equilibrium keyboard supports cannot be proved to infringe, and that an Order of summary judgment of non-infringement for failure of the units to have a "clamp" as defined in the November 10, 2003, Order is appropriate. This acknowledgement is made without prejudice to Plaintiffs' right to appeal with respect to the Order of November 10, 2003, and the definitions therein provided.

The parties make no other stipulations, leaving the remaining issues to prove at trial.

### **3. CONTROVERTED FACTS AND UNRESOLVED ISSUES**

The factual issues remaining to be determined and issues of law for the Court's determination are:

#### **A. FACT ISSUES FOR THE JURY**

##### **(1) Both Parties Agree the Following Are Fact Issues For the Jury:**

1. Whether Steelcase's 99274PR and Compact keyboard supports infringe claims 1, 2, and 3 of the '489 patent either literally or under the Doctrine of Equivalents.
2. If the '489 patent claims were infringed by the 99274PR and Compact keyboard supports and are not invalid and are enforceable, whether Steelcase's infringement of the '489 patent was willful.
3. The amount of damages for the infringement of the '489 patent, if the patent claims are infringed, valid, and enforceable.
4. Regarding the validity of the '489 patent, whether the '489 patent claims are anticipated or rendered obvious in view of the prior art.
5. The priority date for claims 1 through 3 of the '489 patent.
6. Whether the disclosure of the '489 patent meets the enablement and written description requirements of 35 U.S.C. § 112.

##### **(2) Plaintiffs Contend the Following Are Additional Fact Issues For the Jury:**

7. Subject to the Plaintiffs' motion in limine determination, whether Steelcase was a prior inventor under 35 U.S.C. §102(g), with appreciation of the invention of claims 1-3 of the '489 patent.

**(3) Defendants Contend the Following Are Additional Fact Issues For the Jury:**

8. The specific issues regarding the invalidity under 35 U.S.C. §§ 102 and 103 are whether the claims 1-3 of the '489 patent are invalid in view of the following defenses in the event that the '489 patent claims are entitled to the priority date of the first February 1991 patent application.
  - a. claims 1-3 anticipated under 35 U.S.C. §§ 102(a), (b), or (g), by either (i) the GF publications (including brochure, installation instruction and Price List, DX 505-507), or (ii) Steelcase's KBS as it existed prior to Ambrose's first conception of the subject matter of the '489 patent claims;
  - b. claims 1-3 are invalid for obviousness under 35 U.S.C. § 103, in view of the level of skill in the art and one or more of the following references:
    - i. The GF publication (including brochure, installation instruction and Price List, DX 505-507);
    - ii. The Stack Article, DX 510;
    - iii. The Ergo 2000 keyboard support workstations installed at U.S. West in 1989, as reflected in DX 517;
    - iv. Steelcase's 99274PR keyboard support (as of 1988), as reflected in DX 509;
    - v. Schwartz Patent 5,408,784; and
    - vi. Steelcase's KBS as it had been developed prior to Ambrose's conception of the subject matter of the '489 patent claims.

**B. FACT ISSUES FOR THE JUDGE**

**(1) Both Parties Agree the Following Are Fact Issues For the Judge:**

1. Whether Plaintiffs can recover its attorneys fees and legal expenses as an exceptional case under 35 U.S.C. § 285?
2. Whether Steelcase is entitled to its attorney fees and litigation expenses, or any part thereof, in defending the present action under 35 U.S.C. § 285, Fed. R. Civ. P. Rules 11 or 36, and/or 28 U.S.C. § 1927?

**(2) Plaintiffs Contend the Following Are Additional Fact Issues For the Judge:**

3. Regarding Steelcase's allegations of inequitable conduct with respect to the '489 patent, whether the information concerning the Seiler device allegedly sold to U.S. West was material and whether there was any requisite intent to deceive the PTO?
4. Whether the GF publication is legal prior art? This is the subject of one of Plaintiffs' motions in limine.
5. Whether the Stack article is legal prior art? This is the subject of one of Plaintiffs' motions in limine.
6. Whether the Seiler device and alleged sale of the Seiler device in 1989 constitute legal prior art? This is the subject of one of Plaintiffs' motions in limine.

**(3) Defendants Contend the Following Are Additional Fact Issues For the Judge:**

7. (Mixed question of fact, law and discretion) Whether Steelcase has proven inequitable conduct in that Plaintiffs had withheld from the Patent Office information concerning the Ergo 2000 workstation (including their keyboard support) sold to U.S. West in 1989, and information concerning the Steelcase KBS keyboard support, which were material with respect to the application for the '489 patent with the requisite inequitable intent?
8. (Mixed question of fact, law and discretion) Whether Defendants have proven a basis to recover their attorney fees and litigation expenses on the grounds that Plaintiffs had asserted United States Patent 5,961,231 in this action, which Plaintiffs had procured through inequitable conduct in that Plaintiffs had withheld from the Patent Office information concerning the U.S. Patent No. 5,230, 289 and the Steelcase KBS keyboard support which were material with respect to the application for the '231 patent with the requisite inequitable intent?

**C. ISSUES OF LAW**

**(1) Both Parties Agree the Following Are Issues of Law:**

1. Whether the '489 patent is enforceable as a matter of equity?
2. If the jury finds willfulness, should the Court increase the damages up to three times the amount found, pursuant to 35 U.S.C. § 284?
3. If infringement is found and the '489 patent is not invalid and enforceable, should injunctive relief be granted to enjoin the further manufacture and sale of the infringing 99274PR and Compact devices with respect to the '489 patent claims 1-3?

**(2) Plaintiffs Contend the Following Are Issues Of Law:**

4. Whether or not recognition and appreciation of the invention is required under 35 U.S.C. § 102(g) by the persons alleged to be prior inventors before it can be used as legal prior art?
5. If damages are awarded pursuant to 35 U.S.C. § 284, what amount of prejudgment interest should be awarded, and what rate of interest should be applied?

**(3) Defendants Contend the Following Are Issues Of Law:**

6. Whether Plaintiff Frederic C. Ambrose had a legal interest in the '489 patent at any time during the period of alleged infringement of this case, and whether he had or has any Constitutional or statutory standing to bring a patent infringement action against Defendants.
7. Whether Defendant Flex-Rest, LLC can assert a claim for lost profits, when Flex-Rest, LLC has never made, offered for sale or sold any keyboard supports.
8. Whether recognition and appreciation of the claimed invention is required under 35 U.S.C. § 102(g) before it can be used as prior art, and if so, what constitutes such required recognition and appreciation in view of the '489 patent claims 1-3.
9. Whether the standard for invalidity of the '489 patent should be the "clear and convincing evidence" or the "preponderance of the evidence" standard, where the prior art relied upon by Defendants was never presented to the Patent Office, and the patent applicants deliberately withheld some of the asserted prior art from the Patent Office.

10. Do Plaintiffs bear the burden of proof that any of the asserted prior art by Defendants is non-enabling? *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313 (Fed. Cir. 2003).
11. Whether Plaintiffs may introduce any evidence that Defendants received any advice of counsel, or suggest that the jury can draw an adverse inference from any failure by Defendants to waive attorney-client privilege by disclosing any such attorney opinions.
12. Whether the Court should rule by motion in limine that the following are prior art as a matter of law in view of the record: (a) GF publications (including brochure, installation instruction and Price List, DX 505-507; (b) the Stack Article, DX 510; and (c) the Ergo 2000 workstations installed at U.S. West in 1989.
13. Whether pre-judgment interest is required to be presented as part of Plaintiffs' patent infringement damage case, or whether the Court can subsequently add pre-judgment interest to any patent infringement damages found by the jury.

Plaintiffs reserve the right to contest any additional facts Steelcase seeks to prove at trial and to file timely motions if the need arises. Defendants reserve the right to contest any additional facts Plaintiffs seek to prove at trial and to file timely motions as the need arises.

#### **4. WITNESSES**

Non-expert witnesses to be called by the Plaintiffs and Defendants, except those who may be called for impeachment purposes only are:

##### **A. Non-Expert Witnesses:**

###### **1. Plaintiffs' Non-Expert Witnesses**

###### **NAME/ADDRESS**

Frederic C. Ambrose  
Flex-Rest, LLC  
7 Brookfield Street  
Worcester, Massachusetts 016005  
Telephone Number: (508) 896-4478

Expected to testify in person.

Nancy Ambrose  
Flex-Rest, LLC  
7 Brookfield Street  
Worcester, Massachusetts 016005  
Telephone Number: (508) 896-4478

Expected to testify in person.

Dr. Brian O'Malley  
410 Commercial Street  
Provincetown, Massachusetts 02657  
Telephone Number: (508) 487-2571

May testify in person

Bruce Preston (Adverse Witness)  
Manager, Technical Legal Services – retired  
Steelcase Inc.  
Grand Rapids, Michigan

Expected to testify in person, but may be by reading of deposition

Rickson Sun (adverse rebuttal witness)  
100 Forest Avenue  
Palo Alto, California

If allowed to testify, will testify by reading of deposition, if not present at trial

William George (adverse rebuttal witness)  
435 Oxford Way  
Santa Cruz, California 95060

If allowed to testify, will testify by reading of deposition, if not present at trial

Sean Corcoran (adverse rebuttal witness)  
100 Forest Avenue  
Palo Alto, California 94301

If allowed to testify, will testify by reading of deposition, if not present at trial

**Defendants' Objections to Plaintiffs' Fact Witnesses:** None.

## **2. Defendants' Non-Expert Witnesses**

Frederic C. Ambrose 142 The Channel Brewster, Massachusetts 02631	Will testify in person at trial
Richard Benoit 543 Rosewood Avenue Grand Rapids, Michigan	Will testify in person at trial
Steven Channer 25 Ottawa, SW Grand Rapids, Michigan 49503	Will testify in person at trial
John Charles Cottrell 4700 60 <sup>th</sup> Street, SE Grand Rapids, Michigan 49512	May testify in person at trial
William George 435 Oxford Way Santa Cruz, California 95060	Will call to testify by deposition if not available to testify in person at trial.
Jeff Musculus Steelcase Inc. 6100 E. Paris Ave. Calendonia, Michigan 49316	May testify in person at trial
Donald Pangborn Weber Knapp Company 441 Chandler Street Jamestown, New York 14701	Will testify in person at trial
Bruce Preston 2301 Burning Tree Dr. SE Grand Rapids, Michigan 49546	Will testify in person at trial
Donald K. Seiler P.O. Box 251 520 West Street Van Meter, Iowa 50261	Will call to testify by deposition if not available to testify in person at trial
Jane Fulton Suri	May testify in person at trial

Pier 28 Annex The Embarcadero  
San Francisco, California 94105

Morton Ari Cohen  
1752 East 31<sup>st</sup> Street  
Brooklyn, New York 11234

Will testify by way of deposition

Sean Corcoran  
100 Forest Avenue  
Palo Alto, California 94301

Will testify by way of deposition

Nancy K. Day  
5109 Cherry Street  
Kansas City, Missouri 64110-2498

Will testify by way of deposition

Steven Fox  
24 Fox Run, Unit 7  
Marshfield, Massachusetts 02110

Will testify by way of deposition, unless present at trial.

Gary Gushara  
525 Steam Plant Road  
Gallatin, Tennessee

Will attempt to have testify live, but if unavailable will testify by way of deposition

Christopher Stamos  
Testa, Hurwitz & Thibeault, LLP  
125 High Street  
Boston, Massachusetts 02110

Will testify by way of deposition, if not present at trial.

Rickson Sun  
100 Forest Avenue  
Palo Alto, California

May testify by way of deposition, or will testify in person if William George is unavailable to testify in person at trial.

Defendants also list all persons listed by Plaintiffs as potential trial witnesses.

### **Plaintiffs' Objections To Defendants' Fact Witnesses:**

Plaintiffs object to any named fact witness who testifies specifically that they were a prior inventor of the '489 patent claims in issue.

#### **B. Expert Witnesses:**

Expert witnesses to be called by the Plaintiffs and Defendants, except those who may be called for impeachment purposes only, are:

##### **1. Plaintiffs' Expert Witnesses**

###### **NAME/ADDRESS**

Joseph Gemini  
DUGGAN, KENNING & GEMINI, L.L.C.  
53 W. Jackson Blvd., Suite 400  
Chicago, IL 60604-3606  
Phone: 312-294-6400

[Expected to testify in person at trial.]

###### **QUALIFICATIONS**

Mr. Gemini is a Certified Public Accountant experienced in patent damage modeling. He received his MBA in Finance from DePaul University in 1997 and a BBA in Accounting from Western Illinois University in 1985. He received his CPA in 1987. He has practiced with the firm of Duggan, Kenning & Gemini since 1985. Mr. Gemini is a member of the Illinois Society of CPAs and the American Institute of CPAs. He will be offered as an expert on damages models, lost profits, reasonable royalties and as a rebuttal witness to Defendants' economics expert, and will testify pursuant to his expert report and Judge McKeague's *Markman* claim construction of November 10, 2003.

John Rosecrance, PhD, PT, CPE  
Assistant Professor  
Colorado State University  
College of Veterinary Medicine and  
Biomedical Sciences  
1681 Campus Delivery  
Fort Collins, CO 80523-1861  
Phone: 970-491-1405

[Expected to testify in person at trial.]

Dr. Rosecrance is a certified professional ergonomist (CPE), a licensed physical therapist, an assistant professor at Colorado State University, and an adjunct professor at the University of Iowa. He holds a Ph.D. in occupational biomechanics/ergonomics. Generally, he will be offered as a technical expert on the subject matter of the '489 patent infringement, the prior art, and issues of patent validity and enforceability, and will testify pursuant to his expert report and Judge McKeague's *Markman* claim construction of November 10, 2003.

Craig Allen Nard  
Case Western Reserve University  
11075 East Boulevard  
Cleveland, OH 44106-7148  
Phone: 216-368-6348

[Expected to testify in person at trial.]

Mr. Nard is a registered patent attorney, professor of law, and former Clerk to the late Judge Rich of the Court of Appeals for the Federal Circuit. Generally, he will be offered as an expert in patent office procedures, patent licensing, and patent infringement, and will testify pursuant to his expert report and Judge McKeague's *Markman* claim construction of November 10, 2003.

#### **Defendants' Objections to Plaintiffs' Expert Witnesses:**

Defendants object to:

Any testimony by Joseph Gemini relating to lost profits.

Any testimony by John Rosecrance on the issue of validity or enforceability of the '489 patent.

Any testimony by Craig Allen Nard, except with respect to proper issues relating to reasonable royalty.

## **2. Defendants' Expert Witnesses:**

### **NAME/ADDRESS**

Richard Benoit  
543 Rosewood Avenue  
Grand Rapids, Michigan

[Expected to testify in person at trial.]

### **QUALIFICATIONS**

Mr. Benoit has a degree in Architectural Engineering from University of Colorado in 1981. He joined Steelcase in 1986, and worked as an engineer. In the relevant time frame, Mr. Benoit was the product manager and project leader for the development of the Steelcase KBS keyboard support, responsible for the design, manufacture and marketing of the keyboard support. In the 1988-94 time period, Mr. Benoit was responsible for introducing six different keyboard supports for Steelcase. He is expected to testify as to the subject matter of his expert reports and his declarations previously filed in this action, and, in particular, to testify with respect to validity and enforceability issues.

Christopher Bokhart  
InteCap, Inc.  
101 North Wacker Drive  
Suite 1600  
Chicago, Illinois 60606

[Expected to testify in person at trial.]

Mr. Bokhart is a Certified Public Accountant and Managing Director of InteCap, a national consulting firm dedicated to advising clients and counsel in the areas of business valuation, licensing, and litigation support services. He is expected to testify as to the subject matter of his expert reports, and, in particular, he will be offered as an expert on damages models, the lack of any lost profits (if allowed to be introduced to the jury), reasonable royalties and as a rebuttal witness to Plaintiffs' economics expert.

## **Plaintiffs' Objections to Defendants' Expert Witnesses:**

Plaintiffs object to the testimony of Richard Benoit, because he is a percipient fact witness, not qualified as an expert. He has never testified as an expert before on the matters at issue, and his opinion testimony would not assist the trier of fact.

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (A) and (B) will be permitted to testify for any purpose, except impeachment, if the opposing party objects.

## **5. DEPOSITIONS AND OTHER DISCOVERY DOCUMENTS**

All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the Plaintiffs and the Defendants are as follows. The following key was used for objections to the depositions:

R = Relevancy, F.R.E. 402  
P = Prejudice F.R.E. 403  
C = Cumulative, F.R.E. 403  
L = Lack of Personal Knowelge, F.R.E. 602  
H = Hearsay, F.R.E. 802  
F = Foundation/Authenticity, F.R.E. 901  
M = Subject of Motion in Limine

### **1. Deposition Transcripts Offered By Plaintiffs**

<b><u>Name</u></b>	<b><u>Page / Line No.</u></b>
a. <b>Rickson Sun</b>	p. 4, lines 8-17 p. 7, line 21 to p. 8, line 9 p. 8, line 21 to p. 9, line 4 p. 9, lines 11-14 p. 12, lines 11-21 p. 13, lines 3-16 p. 15, lines 4-9 and 12-20 p. 31, lines 4-11 p. 43, line 19 to p. 44, line 7 p. 45, lines 2-4, 7-8, and 10-11 p. 52, lines 10-25 p. 53, line 2 p. 58, line 22 to p. 59, line 8 p. 60, lines 22-24 p. 61, lines 3-5 p. 61, line 11 to p. 62, line 1

p. 62, line 11 to p. 63, line 14  
p. 64, lines 3-8  
p. 65, lines 12-14 and 19-24  
p. 72, lines 12-18  
p. 72, line 23 to p. 73, line 6 and lines 8-12  
p. 75, lines 3-8  
p. 88, lines 12-24  
p. 88, line 25 to p. 89, line 7

**Defendants' Cross Designation to Rickson Sun Deposition:** p. 62, lines 2-10  
p. 63, lines 15-20  
p. 65, lines 15-18  
p. 66, lines 4-9  
p. 88, lines 22-24

**Defendants' Objections to the Deposition of Rickson Sun**

<u>Page/Line</u>	<u>Objections</u>
p. 45, lines 2-4, 7-8, and 10-11	R, F, L
p. 52, lines 10-25	Ambiguous, R, F., L
p. 53, line 2	Ambiguous, R, F, L
p. 60, lines 22-24	R, P
p. 61, lines 3-5	R, P
p. 61, line 11 to p. 62, line 1	R, P
p. 62, line 11 to p. 63, line 14	R, P
p. 64, lines 3-8	R, P
p. 65, lines 12-14 and 19-24	R, P
<b>b. William George</b>	
p. 4, lines 8-14 and 17-20	
p. 12, lines 3-9 and 16-21	
p. 13, lines 2-3 and 7-9	
p. 14, lines 10-12	
p. 15, lines 8-18	
p. 16, lines 4-6	
p. 16, line 24 to p. 17, line 3	
p. 21, line 24 to p. 22, line 2	
p. 25, line 7 to p. 26, line 11	
p. 56, lines 22-24	
p. 57, lines 4-11	

<b>c. Sean Corcoran</b>	p. 4, lines 8-11 and 16-17 p. 11, lines 3-5, 9-10, and 15-22 p. 12, line 24 to p. 13, line 1 p. 13, lines 4-5 and 7-10 p. 14, lines 10-16 p. 47, line 24 to p. 48, line 9 p. 48, lines 14-17 p. 49, lines 1-15 p. 49, line 23 to p. 50, line 11 and lines 13-21
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**Defendants' Cross Designation to p. 48, lines 10-13 and 19-25**  
**Sean Corcoran Deposition:**

**Defendants' Objections to the Deposition of Sean Corcoran**

<b><u>Page/Line</u></b>	<b><u>Objections</u></b>
p. 47, line 24 to p. 48, line 9	R, P
p. 48, lines 14-17	R, P
p. 49, lines 1-15	R, P
p. 49, line 23 to p. 50, line 11 and lines 13-21	R, P

**2. Answers to Written Interrogatories  
and Requests For Admissions Offered by Plaintiffs**

- a. Defendant's Answer to Interrogatory No. 4.
- b. Defendant's Answer to Interrogatory No. 6.
- c. Defendant's Election on Advice of Counsel (Court Docket # 34).

**Defendants' Objections:**

Defendants object to publishing Defendants' Answer to Interrogatory No. 6 and Defendants' Election on Advice of Counsel (Court Docket #34) to the jury.

### **3. Deposition Transcripts Offered by Defendants**

<b><u>Name</u></b>	<b><u>Page / Line No.</u></b>
a. <b>Nancy K. Day</b>	p. 4, lines 8-11 p. 4, lines 23-25 p. 6, lines 9-11 p. 6, lines 20-25 p. 7, lines 2-4 p. 7, lines 10-25 p. 8, lines 1-24 p. 9, lines 7-10 p. 9, lines 14-25 p. 10, lines 1-11 p. 10, lines 19-25 p. 11, lines 1-7 p. 11, lines 14-25 p. 12, lines 1-13 p. 13, lines 8-22 p. 14, lines 2-7 p. 14, lines 14-25 p. 15, lines 1-6 p. 15, lines 10-25 p. 16, lines 1-2 p. 16, lines 7-16 p. 16, lines 22-25 p. 17, lines 1-7 p. 19, line 19 to p. 20, line 1
<b>Plaintiffs' Cross-Designations to Nancy K. Day Deposition:</b>	p. 20, lines 2-4 p. 22, lines 2-5 p. 22, lines 10-21 p. 23, lines 9-22 p. 23, lines 24-25 p. 24, lines 1-10 p. 26, lines 20-25 p. 27, lines 1-3 (ending at "catalogue.")

#### **Plaintiffs' Objections to the Deposition of Nancy K. Day:**

Plaintiffs object to the reading of this deposition, per Plaintiffs' motion in limine regarding the Stack article. The Court has taken the motion under advisement. See, Order of November 18, 2003. If the deposition is to be read at trial, in addition to the objections made in the motion

in limine, Plaintiffs make the following specific objections:

<u>Page/Line</u>	<u>Objections</u>
p. 14, lines 2-7	L, H
<b>b. Morton A. Cohen</b>	p. 5, lines 8-14 p. 7, lines 3-17 p. 7, lines 21-25 p. 8, lines 1-6 p. 8, lines 14-22 p. 9, lines 7-25 p. 10, lines 1-10 p. 10, lines 16-25 p. 11, lines 1-9 p. 11, lines 12-16 p. 12, lines 1-11 p. 12, lines 15-22 p. 13, lines 1-14 p. 13, lines 20-21 p. 14, lines 5-11 p. 14, lines 16-22 p. 15, lines 12-20 p. 16, lines 11-25 p. 17, lines 1-3 p. 17, lines 21-25 p. 18, lines 1-25 p. 19, lines 1-9 p. 19, lines 13-25 p. 20, lines 2-14 p. 20, lines 22-25 p. 21, lines 1-25 p. 22, lines 1-24 p. 23, lines 2-24 p. 24, lines 4-12 p. 24, lines 16-25 p. 25, line 1 p. 25, lines 9-22 p. 26, lines 1-23 p. 28, lines 1-6 p. 29, lines 1-25 p. 30, lines 1-22 p. 31, lines 1-25

p. 32, lines 1-2  
p. 32, lines 9-16  
p. 32, line 25  
p. 33, lines 1-4  
p. 33, lines 7-25  
p. 34, lines 1-25  
p. 35, lines 1-9  
p. 40, line 25  
p. 41, lines 1-16

**Plaintiffs' Cross-Designations to  
Morton A. Cohen Deposition:**

p. 13, lines 15-19  
p. 19, lines 10-12  
p. 22, line 25 – p. 23, line 1  
p. 24, lines 2-3  
p. 36, lines 8-25  
p. 37, lines 1-11  
p. 37, lines 24-25  
p. 38, lines 1-8  
p. 43, lines 15-25  
p. 44, lines 1-2  
p. 45, lines 6-25  
p. 46, lines 1-5

**Plaintiffs' Objections to the Deposition of Morton A. Cohen:**

Plaintiffs object to the reading of this deposition, per Plaintiffs' motion in limine regarding the Stack article. The Court has taken the motion under advisement. See, Order of November 18, 2003. If the deposition is to be read at trial, in addition to the objections made in the motion in limine, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
c. <b>Gary J. Gushura</b>	p. 24, line 16 – p. 25, line 1 p. 30, lines 7-10 p. 32, lines 9-16 p. 32, line 25 – p. 33, line 4 p. 33, line 24 – p. 35, line 9 p. 41, lines 5-16	L L L L L L
	p. 5, lines 4-9 p. 6, lines 8-25 p. 7, lines 1-16	

p. 7, lines 21-23  
p. 8, lines 1-3  
p. 8, lines 6-10  
p. 8, lines 17-22  
p. 8, line 25  
p. 9, lines 1-2  
p. 9, lines 8-13  
p. 9, lines 17-22  
p. 10, lines 1-6  
p. 10, lines 10-25  
p. 11, lines 1-25  
p. 12, lines 1-22  
p. 12, line 25  
p. 13, lines 1-14  
p. 13, lines 17-25  
p. 14, lines 1-9  
p. 14, lines 13-15  
p. 14, lines 18-25  
p. 15, lines 1-25  
p. 16, lines 1-25  
p. 17, lines 1-25  
p. 18, lines 1-25  
p. 19, lines 1-4  
p. 19, lines 8-25  
p. 20, lines 1-25  
p. 21, lines 1-18  
p. 21, lines 22-25  
p. 22, lines 1-9  
p. 22, lines 13-25  
p. 23, line 1  
p. 23, lines 4-12  
p. 23, lines 18-25  
p. 24, lines 1-5  
p. 24, lines 18-20  
p. 25, lines 2-21  
p. 25, line 25  
p. 26, lines 1-24  
p. 35, lines 15-19  
p. 36, lines 9-19  
p. 37, lines 4-13

**Plaintiffs' Cross-Designations to  
Gary J. Gushura Deposition:**

p. 13, lines 15-16  
p. 27, lines 15-20  
p. 28, lines 9-22  
p. 29, lines 5-23  
p. 30, lines 2-4  
p. 30, lines 10-13  
p. 33, lines 6-23  
p. 34, lines 14-23  
p. 35, lines 2-9  
p. 37, lines 21-25  
p. 38, lines 1-12  
p. 38, line 14

**Plaintiffs' Objections to the Deposition of Gary Gushura:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding the GF publication. The Court denied the motion without prejudice to Plaintiffs' right to challenge the adequacy of the Defendants' foundation for such evidence. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
	p. 37, lines 4-13	L
d. <b>Rickson Sun</b>	p. 7, lines 21-25 p. 8, lines 1-25 p. 9, lines 1-14 p. 9, lines 21-25 p. 10, lines 1-2 p. 10, lines 14-25 p. 11, lines 1-4 p. 11, lines 10-25 p. 12, lines 1-4 p. 12, lines 11-21 p. 13, lines 3-22 p. 15, lines 4-9	

p. 15, lines 12-17  
p. 23, lines 2-12  
p. 23, lines 18-23  
p. 24, lines 1-25  
p. 25, lines 1-2  
p. 26, lines 4-6  
p. 26, lines 19-21  
p. 28, lines 3-9  
p. 29, lines 14-16  
p. 28, line 25  
p. 29, lines 1-22  
p. 30, lines 4-9  
p. 30, lines 16-25  
p. 31, lines 1-6  
p. 31, lines 20-25  
p. 32, lines 1-17  
p. 32, lines 22-25  
p. 33, lines 10-16  
p. 34, lines 6-25  
p. 35, lines 1-18  
p. 36, lines 13-15  
p. 36, line 17  
p. 36, lines 23-25  
p. 37, lines 1-2  
p. 38, lines 23-25  
p. 39, line 1  
p. 39, lines 6-9  
p. 39, lines 15-18  
p. 42, lines 7-16  
p. 42, lines 18-22  
p. 43, lines 2-5  
p. 43, lines 19-25  
p. 44, lines 1-7  
p. 44, lines 12-19  
p. 44, lines 22-23  
p. 45, lines 14-22  
p. 46, lines 13-18  
p. 47, lines 9-16  
p. 52, lines 10-19  
p. 52, lines 24-25  
p. 54, lines 20-23  
p. 55, lines 1-6  
p. 55, lines 10-11  
p. 56, lines 18-25  
p. 58, lines 22-25  
p. 59, lines 1-5

p. 59, lines 9-11  
p. 59, lines 15-22  
p. 60, lines 7-18  
p. 71, lines 20-21  
p. 71, line 25  
p. 72, lines 2-5  
p. 72, lines 12-25  
p. 73, lines 1-6  
p. 73, lines 8-12  
p. 74, lines 1-16  
p. 82, lines 11-25  
p. 83, lines 1-4  
p. 83, lines 6-8  
p. 83, lines 10-25  
p. 84, lines 1-9  
p. 84, lines 11-25  
p. 85, lines 1-4  
p. 85, lines 19-24  
p. 86, lines 1-19  
p. 86, lines 23-25  
p. 87, line 1  
p. 87, lines 3-8  
p. 87, lines 10-14  
p. 87, lines 17-21  
p. 87, lines 23-24  
p. 88, line 2  
p. 88, lines 11-15  
p. 88, line 25  
p. 89, lines 1-24

**Plaintiffs' Cross-Designations to  
Rickson Sun Deposition:**

p. 23, lines 24-25  
p. 25, lines 3-5  
p. 26, lines 9-11  
p. 29, lines 23-24  
p. 30, lines 13-15  
p. 35, lines 19-23  
p. 37, lines 3-5 and 9  
p. 40, lines 1-7  
p. 40, lines 13-22  
p. 47, lines 17-24  
p. 57, line 1  
p. 89, line 25 – p. 90, line 4

**Plaintiffs' Objections to the Deposition of Rickson Sun:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding the KBS device. The Court denied the motion without prejudice to the Plaintiffs' right to make objections to the admission of subject exhibits at trial. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
	p. 45, lines 21-22	L
	p. 83, lines 2-4	Leading
	p. 83, lines 6-8	Leading
	p. 84, lines 6-9	Leading
	p. 84, lines 11-19	Leading
	p. 85, lines 19-24	Leading
	p. 86, line 1	Leading
	p. 86, line 23 – p. 87, 1	Leading
	p. 87, lines 3-8	Leading
	p. 87, lines 10-14	Leading
	p. 87, lines 17-21	Leading
e.      Steven N. Fox	p. 5, lines 15-24	
	p. 12, lines 21-25	
	p. 13, line 1	
	p. 13, lines 7-12	
	p. 15, lines 2-8	
	p. 18, lines 4-12	
	p. 18, lines 19-22	
	p. 20, lines 8-20	
	p. 21, line 1	
	p. 21, lines 20-25	
	p. 22, lines 1-10	
	p. 42, lines 12-18	
	p. 43, lines 14-25	
	p. 44, lines 1-3	
	p. 44, lines 6-24	
	p. 46, lines 11-17	
	p. 46, lines 24-25	
	p. 47, lines 1-6	
	p. 50, lines 9-23	
	p. 51, lines 16-21	

p. 52, lines 3-5  
p. 52, lines 15-17  
p. 52, lines 24-25  
p. 53, lines 1-15  
p. 67, lines 13-18  
p. 68, lines 9-16  
p. 68, lines 22-25  
p. 69, lines 1-7  
p. 70, lines 19-25  
p. 71, lines 1-2  
p. 86, lines 10-25  
p. 87, lines 1-6  
p. 91, lines 5-18  
p. 101, lines 1-25  
p. 102, lines 1-6  
p. 102, lines 17-25  
p. 103, line 1  
p. 103, lines 13-25  
p. 104, lines 1-24  
p. 107, lines 18-25  
p. 108, lines 1-11  
p. 108, lines 15-20  
p. 109, lines 12-23  
p. 111, lines 21-25  
p. 112, lines 1-11  
p. 112, lines 24-25  
p. 113, lines 1-10  
p. 114, lines 4-16  
p. 124, lines 15-16  
p. 126, lines 1-25  
p. 127, lines 1-22  
p. 128, lines 7-10  
p. 139, lines 6-25  
p. 140, lines 1-25  
p. 141, lines 1-7  
p. 143, lines 14-25  
p. 144, lines 1-25  
p. 145, lines 1-25  
p. 146, lines 1-10  
p. 149, lines 22-25  
p. 150, lines 1-7  
p. 176, lines 19-24  
p. 177, lines 7-25  
p. 178, lines 1-25  
p. 179, lines 1-8  
p. 180, lines 4-21

p. 181, lines 23-25  
p. 182, lines 1-10  
p. 183, lines 22-25  
p. 184, lines 1-22  
p. 185, lines 5-9  
p. 188, lines 8-25  
p. 189, lines 1-19  
p. 190, lines 21-25  
p. 191, lines 1-14  
p. 192, lines 2-7  
p. 192, lines 22-25  
p. 193, lines 1-10  
p. 193, lines 24-25  
p. 194, lines 1-10  
p. 194, lines 17-25  
p. 195, line 1  
p. 195, lines 11-16  
p. 196, lines 6-10  
p. 198, lines 18-25  
p. 199, lines 1-4  
p. 199, lines 22-25  
p. 200, lines 1-20  
p. 201, lines 24-25  
p. 202, lines 1-8  
p. 202, lines 15-22  
p. 205, lines 7-19  
p. 207, lines 9-25  
p. 208, lines 4-22  
p. 219, line 25  
p. 220, lines 1-7  
p. 231, lines 24-25  
p. 232, lines 1-18  
p. 233, lines 17-25  
p. 234, lines 1-3  
p. 237, lines 2-15  
p. 242, lines 2-25  
p. 243, lines 1-14  
p. 244, lines 4-22  
p. 245, lines 14-25  
p. 246, lines 1-19  
p. 247, lines 4-25  
p. 248, lines 1-11  
p. 249, lines 22-25  
p. 250, lines 1-2  
p. 250, lines 23-25  
p. 251, lines 1-20

p. 252, lines 16-25  
p. 253, line 1  
p. 259, lines 8-25  
p. 260, lines 1-20  
p. 261, lines 8-25  
p. 262, lines 1-16  
p. 263, lines 9-25  
p. 264, lines 1-12  
p. 264, lines 16-22  
p. 267, lines 5-16  
p. 269, lines 7-25  
p. 292, lines 22-25  
p. 293, lines 1-5  
p. 293, lines 11-21  
p. 294, lines 1-16

**Plaintiffs' Cross-Designations to  
Steven N. Fox Deposition:**

p. 20, lines 21-25  
p. 68, lines 18-21  
p. 103, lines 2-12  
p. 106, lines 9-24  
p. 109, line 24 – p. 110, line 8  
p. 156, line 23 – p. 157, line 19  
p. 157, line 23 – p. 159, line 6  
p. 159, line 8 – p. 160, line 25  
p. 161, lines 2-21  
p. 161, line 23 – p. 163, line 1  
p. 183, lines 23-25  
p. 184, line 23 – p. 185, line 1  
p. 220, lines 8-22  
p. 243, line 15 – p. 244, line 3  
p. 251, line 21 – p. 252, line 8  
p. 253, lines 2-20  
p. 265, lines 1-5  
p. 265, line 19 – p. 266, line 4  
p. 270, lines 1-7  
p. 313, lines 3-12

**Plaintiffs' Objections to the Deposition of Steven N. Fox:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding inequitable conduct. The Court denied the motion insofar as it seeks to exclude evidence. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
	p. 52, lines 3-5 and 15-17	L
	p. 53, lines 7-10	L
	p. 143, line 14 – p. 146, line 10	R, L
	p. 180, lines 15-21	L
	p. 219, line 25 – p. 220, line 7	L – Calls for legal conclusion
	p. 264, lines 6-12, 16-22	Calls for legal conclusion
f. William R. George	p. 4, lines 8-10	
	p. 4, lines 17-20	
	p. 10, lines 13-25	
	p. 11, lines 1-3	
	p. 11, lines 18-19	
	p. 12, lines 3-9	
	p. 12, lines 16-21	
	p. 13, lines 2-13	
	p. 13, lines 18-22	
	p. 14, lines 1-12	
	p., 14, lines 24-25	
	p. 15, line 1	
	p. 15, lines 8-21	
	p. 15, line 25	
	p. 16, lines 1-6	
	p. 16, lines 20-25	
	p. 17, lines 1-3	
	p. 18, lines 13-23	
	p. 19, lines 8-9	
	p. 19, lines 13-14	
	p. 19, lines 19-21	
	p. 20, lines 11-25	
	p. 21, lines 1-25	
	p. 22, lines 1-10	

p. 22, lines 17-25  
p. 23, lines 1-17  
p. 24, lines 2-4  
p. 24, lines 11-21  
p. 25, lines 7-25  
p. 26, lines 1-15  
p. 26, lines 21-25  
p. 27, lines 1-25  
p. 28, lines 1-9  
p. 28, lines 14-15  
p. 28, lines 17-20  
p. 29, lines 20-25  
p. 30, lines 1-2  
p. 30, lines 9-16  
p. 31, lines 5-21  
p. 32, lines 5-7  
p. 32, lines 9-13  
p. 33, lines 11-13  
p. 33, lines 19-25  
p. 34, lines 1-2  
p. 34, lines 14-25  
p. 35, lines 1-24  
p. 36, lines 11-17  
p. 37, lines 18-22  
p. 38, lines 17-25  
p. 40, lines 11-18  
p. 44, lines 8-16  
p. 45, line 16-22  
p. 46, lines 7-11  
p. 51, lines 17-25  
p. 52, lines 1-4  
p. 53, lines 19-21  
p. 53, line 25  
p. 54, lines 1-25  
p. 55, lines 1-3  
p. 55, lines 6-8  
p. 55, lines 10-20  
p. 60, lines 8-12  
p. 60, lines 17-20  
p. 62, lines 12-25  
p. 63, lines 1-6  
p. 65, lines 22-25  
p. 66, lines 1-7  
p. 68, lines 7-11  
p. 68, lines 20-25  
p. 69, lines 1-25

p. 70, lines 1-25  
p. 71, lines 1-7  
p. 71, lines 16-24  
p. 72, lines 24-25  
p. 73, lines 1-5  
p. 78, lines 22-25  
p. 79, line 1  
p. 79, lines 10-20  
p. 79, lines 22-25  
p. 80, lines 1-5  
p. 83, lines 14-16  
p. 83, lines 22-25  
p. 84, lines 1-7  
p. 84, lines 20-25  
p. 85, lines 1-2  
p. 85, lines 6-12  
p. 85, lines 23-25  
p. 86, lines 1-12  
p. 87, lines 9-25  
p. 88, lines 1-5  
p. 91, lines 8-14

**Plaintiffs' Cross-Designations to  
William R. George Deposition:**

p. 11, line 20  
p. 31, line 25 – p. 32, line 4  
p. 32, lines 14-19  
p. 33, lines 15, 17-18  
p. 40, lines 19-25  
p. 71, line 25 – p. 72, line 5  
p. 72, lines 7-9  
p. 72, lines 22-23  
p. 73, lines 6-8  
p. 80, line 16 – p. 81, line 2  
p. 81, lines 7-15  
p. 83, lines 17-18  
p. 85, lines 3-5  
p. 85, lines 13-14  
p. 85, lines 18-22

**Plaintiffs' Objections to the Deposition of William R. George:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding the KBS device. The Court denied the motion without prejudice to the Plaintiffs' right to make objections to the admission of subject exhibits at trial. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
	p. 23, lines 5-10	L
	p. 62, line 21 – p. 63, line 6	L
	p. 83, lines 22-25	L
	p. 87, line 13 – p. 88, line 5	L
<b>g. Sean M. Corcoran</b>	p. 4, lines 8-9	
	p. 4, lines 16-17	
	p. 7, lines 9-12	
	p. 7, lines 22-24	
	p. 8, lines 15-21	
	p. 9, lines 4-9	
	p. 9, lines 18-20	
	p. 11, lines 15-22	
	p. 12, lines 24-25	
	p. 13, line 1	
	p. 13, lines 4-5	
	p. 13, lines 7-10	
	p. 13, lines 12-16	
	p. 14, lines 10-16	
	p. 15, line 24	
	p. 16, lines 2-6	
	p. 16, lines 24-25	
	p., 17, lines 1-9	
	p. 18, lines 8-12	
	p. 19, lines 8-11	
	p. 19, lines 24-25	
	p. 20, lines 1-2	
	p. 22, lines 10-13	
	p. 26, lines 9-25	
	p. 32, lines 23-25	
	p. 33, lines 1-6	
	p. 43, lines 18-25	

p. 44, lines 1-3

**Plaintiffs' Cross-Designations to  
Sean M. Corcoran Deposition:**

p. 7, lines 19-21 and 25  
p. 8, line 4  
p. 22, line 9  
p. 23, lines 5-7 (first sentence)

**Plaintiffs' Objections to the Deposition of Sean M. Corcoran:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding the KBS device. The Court denied the motion without prejudice to the Plaintiffs' right to make objections to the admission of subject exhibits at trial. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections:

	<u>Page/Line</u>	<u>Objections</u>
	p. 32, line 23 – p. 33, line 6	L
<b>h. Donald K. Seiler</b>	p. 5, lines 8-10 p. 8, lines 14-25 p. 9, lines 1-3 p. 9, lines 7-24 p. 10, lines 15-18 p. 11, lines 17-19 p. 11, lines 23-25 p. 12, lines 1-11 p. 13, lines 2-16 p. 13, lines 22-25 p. 14, lines 1-4 p. 14, lines 12-15 p. 14, lines 19-25 p. 15, lines 23-25 p. 16, lines 1-3 p. 16, lines 16-19 p. 16, lines 23-25 p. 17, lines 1-3 p. 17, lines 19-25 p. 18, lines 1-25 p. 19, line 1 p. 19, lines 5-11 p. 19, lines 13-16 p. 19, lines 21-25	

p. 20, lines 1-25  
p. 21, line 1  
p. 21, lines 5-18  
p. 21, lines 22-25  
p. 22, lines 1-3  
p. 23, lines 1-12  
p. 23, lines 16-25  
p. 24, lines 1-14  
p. 25, lines 9-19  
p. 26, lines 7-10  
p. 26, lines 13-21  
p. 27, lines 8-18  
p. 27, lines 22-25  
p. 28, lines 1-25  
p. 29, lines 1-25  
p. 30, lines 1-6  
p. 30, lines 16-17  
p. 31, lines 3-8  
p. 31, lines 10-12  
p. 31, lines 14-19  
p. 32, lines 1-25  
p. 33, lines 1-2  
p. 33, lines 8-25  
p. 34, lines 1-25  
p. 35, lines 1-25  
p. 36, lines 1-15  
p. 36, lines 22-25  
p. 37, lines 1-2  
p. 37, lines 5-13  
p. 37, lines 17-23  
p. 38, lines 11-15  
p. 38, lines 19-25  
p. 39, lines 1-25  
p. 40, lines 1-7  
p. 40, lines 12-15  
p. 40, lines 17-25  
p. 41, lines 1-10  
p. 41, lines 15-19  
p. 41, lines 22-24  
p. 42, lines 1-25  
p. 43, lines 1-7  
p. 43, lines 16-18  
p. 43, lines 20-23  
p. 44, lines 7-8  
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**Plaintiffs' Cross-Designations to  
Donald K. Seiler Deposition:**

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p. 47, lines 15-25  
p. 48, lines 1-7  
p. 48, lines 11-25  
p. 49, lines 1-19  
p. 77, lines 9-11  
p. 77, lines 16-25  
p. 78, lines 1-5  
p. 19, lines 2-4  
p. 50, line 7 – p. 52, line 2  
p. 52, lines 6-13  
p. 59, lines 15-22  
p. 60, lines 14 – p. 61, line 1  
p. 61, lines 6-11  
p. 61, lines 16-24  
p. 62, line 1 – p. 63, line 17  
p. 63, lines 19-24  
p. 64, lines 1-9  
p. 64, line 14 – p. 65, lines 3  
p. 65, lines 15-17  
p. 65, line 25 – p. 67, line 19  
p. 67, line 24 – p. 68, line 6  
p. 68, lines 8-16  
p. 68, line 18 – p. 69, line 6  
p. 69, lines 8-17  
p. 70, lines 16-19  
p. 70, line 25 – p. 71, line 7  
p. 72, lines 2-8  
p. 72, line 16 – p. 73, line 6  
p. 73, lines 15-24  
p. 74, line 2  
p. 75, lines 6-8  
p. 75, line 20 – p. 76, line 2  
p. 76, lines 5-8  
p. 77, lines 1-4

## **Plaintiffs' Objections to the Deposition of Donald K. Seiler**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding the Seiler device, which the Court granted in part and denied in part. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs made the following specific objections:

<u>Page/Line</u>	<u>Objections</u>
p. 41, lines 7-10	Leading
p. 41, lines 15-19	Leading
p. 41, lines 22-24	Leading
p. 42, line 1	Leading
i. <b>Christopher W. Stamos</b>	
p. 7, lines 17-23	
p. 13, lines 15-25	
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p. 108, lines 21-25	
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p. 129, lines 15-25	
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p. 131, lines 13-20	
p. 132, lines 3-5	
p. 132, lines 10-25	
p. 133, lines 1-25	
p. 134, lines 1-3	
p. 135, lines 1-25	
p. 136, lines 1-12	

p. 137, lines 6-11  
p. 140, lines 23-25  
p. 141, lines 1-13  
p. 141, lines 15-22  
p. 142, lines 17-25  
p. 143, 1-8  
p. 143, lines 13-19  
p. 144, lines 8-12  
p. 146, lines 2-5  
p. 146, lines 11-22  
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p. 208, lines 16-24  
p. 209, lines 18-25  
p. 210, lines 1-9  
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p. 220, lines 1-4  
p. 220, lines 15-18  
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p. 255, lines 2-5  
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p. 256, lines 6-11  
p. 256, lines 15-16  
p. 260, lines 9-24

p. 262, lines 12-25  
p. 263, lines 1-9  
p. 264, lines 6-7  
p. 264, lines 16-25  
p. 265, lines 1-7  
p. 266, lines 5-13  
p. 268, lines 22-25  
p. 269, lines 1-3

**Plaintiffs' Cross-Designations to  
Christopher W. Stamos Deposition:**

p. 7, line 24 – p. 8, 1  
p. 9, lines 3-10  
p. 9, lines 16-24  
p. 143, line 12  
p. 215, lines 19-21  
p. 215, line 24 – p. 216, line 8  
p. 216, line 10  
p. 216, line 21 – p. 218, line 1  
p. 256, lines 2-5  
p. 256, lines 17-24

**Plaintiffs' Objections to the Deposition of Christopher W. Stamos:**

Plaintiffs objected to the reading of this deposition, per Plaintiffs' motion in limine regarding inequitable conduct. The Court denied this motion insofar as it seeks to exclude evidence. See, Order of November 18, 2003. If the deposition is to be read at trial, Plaintiffs make the following specific objections.

<u>Page/Line</u>	<u>Objections</u>
p. 220, lines 15-18, 23	Calls for Legal Conclusion

**6. LENGTH OF TRIAL**

Plaintiffs' counsel estimates the trial will last approximately seven to eight (7-8) trial days. Defendants' counsel estimates that the trial requires about six (6) trial days.

## **7. PROSPECTS OF SETTLEMENT**

The status of settlement negotiations is that the parties participated in a settlement conference held October 2, 2003 with Magistrate Judge Scoville. No settlement discussions have occurred since the conference. Settlement is unlikely.

## **8. OTHER ISSUES**

1. The parties suggest showing the jury the Federal Judicial Conference videotape "Introduction to the Patent System" as part of any preliminary instructions.
2. Defendants request that the issue of willfulness be bifurcated, so that the jury will initially determine infringement and validity, and, if applicable, damages. Any issues of willfulness will then be submitted to the jury for a separate subsequent determination only if infringement and validity are found. Plaintiffs disagree and feel the issues should be tried together, as the underlying facts are intertwined with other issues for the jury.
3. Both parties request a date certain for start of trial.

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**ORDER**

SO ORDERED this 22nd day of January, 2004.

/s/ David W. McKeague

Honorable Judge David W. McKeague  
U.S. District Court